



Child Support: 'How to Appeal'

This document is designed for the parents, or other carers of children, involved in Child Support appeals. It supplements the information in the booklet 'How to Appeal', and they should be read together. Some of the useful information in that booklet is not repeated here.

The parties to an appeal

Most Tribunal cases have only 2 parties: the appellant and the first tier agency that made the decision which is being challenged (the respondent). But Child Support appeals have 3 parties: the appellant, who challenges the decision of the Commissioner for Child Maintenance (CMEC); the Commissioner, who is the first respondent; and the other parent, or second respondent.

Of course all Child Support cases involve at least one child too, but it would rarely be appropriate for a child to attend a hearing, and they are not a party to the proceedings. The law says that in any decision in these cases the Tribunal must have regard to the interests of any child likely to be affected by the decision, so we consider them even though they are not there.

The importance of the Enquiry Form

We send out the Enquiry Form with our explanatory notes, and ask that you return the form to us within 14 days.

This is important to us so that we can see what sort of appeal hearing you want - one where you attend and talk to the Tribunal about the case, or one where you prefer the Tribunal to make a decision on the case papers, without you attending.

There is also provision on the form for you to tell us about any particular needs that you have - for example, for an interpreter, or to take account of a disability, or because you have work or child care commitments which make it preferable for your case to be heard at particular times. We will do our best to accommodate individual needs, within the limitations of the service that we are able to provide. Where there are competing interests about a request for listing, a judge will decide the issue.

You should tell the Tribunal Service in the Enquiry Form now if there are any dates when you know you cannot come to a hearing. If other problem dates arise, write and inform us. Sometimes it is difficult for a fair decision to be made on the papers in these complex cases, but in the interests of the child we must try to obtain sufficient information to come to a fair decision under the law, and a judge may direct that you attend and answer questions about your circumstances, particularly your financial circumstances where they are relevant. If this is directed and you do not attend, the Tribunal might adjourn to allow you another opportunity to be there, or they might go ahead in your

absence. You should be aware that if you choose not to attend a hearing, the Tribunal has the power to make a decision in your absence, using their own experience and common sense to help them find the facts of the case. If you are directed to attend or to produce documents, and do not do so, the Tribunal might make its decision on the basis that you are not cooperating, because it is not in your interests to attend, or to produce the documents which have been sought.

Where will the case be heard?

All appeals to our Tribunals are registered in the processing centre in the region where the appellant lives, and are automatically listed to be heard at the venue closest to their home address. However this is not always suitable in child support cases.

If you wish the appeal to be heard elsewhere, perhaps because you are a respondent with caring responsibilities, and you wish the case to be listed near to your home, you must write to us. Our administrative staff will put your request before a judge, who may ask for more information from you or another party before making a decision.

The Commissioner's representative will be able to attend at any venue, so the judge will look at what is most suitable for the parents/carers. Or in the event of a disagreement, decide where the balance of convenience lies.

In some of our venues we have the facility to offer a video link to another Tribunal elsewhere in the country, but these are few and far between at the moment. We are able to pay travel expenses and some child-minding expenses for those attending. Generally these need to be claimed by completing a form after the hearing. Please see the main booklet for more details.

When will the case be heard?

That depends upon how long after the appeal is made the Commission send the papers to us. After we get the papers we will register the case, and where there are no problems about where the case is to be heard, or confidentiality issues, we will then try to list the case.

The first hearing should in a simple case enable the Tribunal to make a decision. In a case where the issues are more complicated and perhaps further documents are required, the Tribunal will use the first hearing to give focussed directions as to the production of documents so that the next hearing can be fully effective.

What if I can't attend?

We try to avoid the problem dates you have already given us, but once a hearing date is given the case will usually go ahead on that date. The hearing should be treated as an important commitment and other things built around it. It is unlikely to be put off unless something unexpected and unavoidable crops up.

Remember that if you do not come to the hearing, the Tribunal will not be able to ask you questions, and that may weaken your case. The Tribunal is not bound to accept anyone's evidence. It may decide the facts by drawing

conclusions based on the evidence. It may also rely on its specialist knowledge in making findings. If one party fails to comply with directions to produce evidence, it may assume that there is no evidence to support their arguments.

What if I don't want my ex-partner to know where I am living?

You may elect confidentiality. That is where, if the other party does not know where you live, your address, or other things which might lead to your address being discovered, are edited out of the Tribunal papers. The editing process is time-consuming, and the Tribunal will often want to check matters where confidentiality has been elected, but it appears from the papers that the parties may know each other's address. Such a direction might enquire:

- Do you know the other parent's address?
- Does the other parent know your address?
- On what basis do you seek that papers are presented with addresses and the means of tracing another party kept confidential?

If these questions are not answered, or from the answers it seems that your whereabouts are known then a further direction may be made that confidentiality editing is stopped.

What if I don't want my ex-partner to know my financial affairs, or those of my new partner?

Only the whereabouts of a party, or a child, can remain undisclosed. Financial details will not be redacted. It is important, where finances are an issue, that all parties are able to discuss the evidence of earnings/self employed remuneration. The earnings of a new partner do not impact directly on the amount a parent has to pay for a child who is not living with them, nor should they affect the amount that a parent with care receives. But in some cases the new partner's financial circumstances are relevant in explaining how a parent is surviving, despite declaring only a low income. It is more likely to harm, than help your case, if you are not prepared to reveal your partner's position.

Documents sent in 'for tribunal eyes only'

All documents shown to the Tribunal will be sent to all parties. It is not possible for a document to be shown to the Tribunal, but not to the other parties involved. If a person sends documents to the Tribunal, on terms that the other party or parties cannot see them, the Tribunal will not look at them, and the person sending the documents will be treated as not having supplied them. To send in documents on that basis will not amount to compliance with directions to produce documents.

What do I need to do before the hearing?

The Tribunal has a substantial bundle of papers. Check that you have all the documents. You have copies of everything the Tribunal has. The Tribunal has nothing else. Check that you have put in the documents you want the Tribunal to see. Don't rely on the Commission to put documents in.

If directions have been given for you to produce documents, this is your chance to check that you have sent everything in.

The Tribunal gives directions to enable its findings to be based on the best evidence. If they are not followed, the Tribunal may decide that things are being hidden. If so, the Tribunal will use its expertise to go on to decide what

the facts really are. That may mean a worse outcome for the person whose finances are under scrutiny.

Challenging a Direction

If the Tribunal makes a direction with which you are unable to comply, or if you want the Tribunal to make a particular direction in relation to another party, you must write in and apply for a variation of an existing direction, or for a particular direction to be made. If you cannot comply with the directions you must be ready to explain why. You must give reasons.

What is the format of the appeal?

Tribunal proceedings are legal proceedings. The Tribunal may consist of a judge sitting alone, or, where there are financial documents to consider, the judge may sit with a financial member, who is an accountant. Both are independent of the Commission.

Some parties to Child Support appeals have some experience of hearings in divorce or other family proceedings, and you may find our hearings similar to those.

We sit on either side of a table, and evidence is given seated. Sometimes the judge might require you to swear an oath or make a solemn affirmation. The forms of oath and affirmation are those used in the courts.

The difference between Tribunals and Courts is that we are inquisitorial, which means that the Tribunal will ask questions to try to establish the facts in a case, rather than leaving the parties to put forward what they believe to be relevant. For that reason, directions are sometimes made for the attendance of parties, or for the production of documents. You are advised to treat these directions seriously, as you would any legal document.

At the hearing you can present your own case but you are entitled to be represented by any person that you choose. You do not need to have a legal representative.

If you don't have a legal representative, but you are being assisted by a partner, for example, that person should be aware that there are some responsibilities attached to being a representative.

The hearing may be recorded at some venues. At others the judge will take a note of the main points made.

Who can be present?

Although the proceedings of the Tribunal are public, unless the judge directs otherwise, it is rare for any stranger to attend, and the judge may, if outsiders do wish to be present, canvass the views of the parties as to whether or not the hearing should be declared private. Although justice is generally done in public in the UK, it is recognised that some cases, and family disputes in particular, may be more suitable for a private hearing. The parties of course have a right to participate, as do their representatives. There may be others who come along to provide support. It is for the judge, who is in control of the procedure at the hearing, to decide who else may be present. But as a guide a single companion will normally be allowed to sit with you at the Tribunal

table. Where the number of 'supporters' for a party might be rather overwhelming for the Tribunal - our rooms are not large - or for another party, the judge might limit those who can be present.

If a person is to give evidence to the Tribunal the judge will decide whether that person can sit in the hearing prior to their evidence, or whether it would be more helpful for the Tribunal if they waited outside. Your representative cannot be excluded, so do be sure to explain to the judge if your representative is also to give evidence, so that there is no confusion. The importance that the Tribunal attaches to evidence may be affected if the witness was present whilst other relevant issues were discussed.

What about CMEC?

The Commission will generally be represented by a member of their staff. This will not be the person who made the decision under appeal. This representative can't give you advice about your case at the hearing, but they can sometimes help to explain some of the complex child support processes and suggest practical courses of action, such as who to telephone about a query, because they are familiar with the workings of the organisation.

Evidence

If you have written evidence that you wish the Tribunal to consider, such as bank statements or other financial documents, it is important to produce it well in advance so that it can be sent to the Tribunal at least 10 days before the hearing. Please send legible photocopies clearly marked with the case name and number, and bring the originals to the hearing in case the Tribunal wishes to examine them.

Where a large bundle of documents is produced on the day of the hearing there will rarely be time for them to be considered properly. Remember that everyone is entitled to see the evidence and to know the issues in advance. An adjournment may result. Alternatively the Tribunal has the power to refuse to consider the documents, and to decide the case without reference to them.

What governs the decisions taken in the case?

Decisions of a Tribunal are made according to the Tribunal Procedure Rules, and the law applicable to the subject matter of the dispute. In these appeals that is the Child Support legislation.

In deciding issues of Tribunal procedure, the Rules provide our framework. As to the subject matter of the appeal itself, that being the amount of Child Support Maintenance that is payable, if any, we adhere to the statutes and regulations.

Is the decision of the Tribunal final?

Generally it is. This is a good reason why you should take part to the maximum extent possible.

If you produced a document to the Tribunal before the hearing, but it was not considered, or if you were unaware of the hearing, there may be grounds to set the decision aside and re-hear the case. But this remedy is not available where you decide after the event that a document might help your case, or where you sent documents in late, or where you did not keep us informed

about a change of address. If you want a judge to consider this you must tell us as soon as possible and in any event within one month of notification of the decision.

There is the possibility of a further appeal on a point of law if you are able to establish that the Tribunal applied the law wrongly. It will usually be harder for you to do that if you have not played an active part and so know little about the case.

The further appeal is to the Upper Tribunal. There is no right of appeal; you must be granted permission, either by a judge of this Tribunal or the Upper Tribunal. Permission will only be granted if it is thought that the tribunal may have made a mistake as to the law.

The procedure is not complicated but there is a form to complete and there are time limits.

Remember that the opportunities that you have to challenge the decision of the Tribunal are also available to the other parties to the appeal: generally the other parent and the Commissioner.

When our Tribunal has made its decision, you will be given a document setting out the steps you need to take to mount a further challenge.

At the hearing

The Tribunal has to decide what the facts are. They will do this from the oral and written evidence. Deciding on the facts may involve the Tribunal disbelieving some or all of a party's evidence. The Tribunal is entitled to prefer one account of events over another. Being at the hearing so the tribunal can question you about your evidence will give the Tribunal a better opportunity to test its consistency.

It will help the Tribunal if you set out a summary of the important facts, in date order, and send it in or hand it in before the hearing. Keep it short. Refer to the page numbers.

Before the end of the hearing, make sure you have drawn the Tribunal's attention to the most important points you want to make. You can say what you think the Tribunal decision should be, and why. You can write that in advance, or you can say that to the Tribunal at the end of the hearing. It is easier not to do it from memory.

The Tribunal will decide the case on the evidence before it. If you do not provide the evidence and explanations required, the Tribunal may decide the case against you. If the Tribunal has directed that you provide particular documents, or that you attend to give evidence and answer questions, and you fail to do so, the Tribunal is entitled to take the view that your failure is because you fear that to produce what has been directed, or to attend, will harm your case. In the absence of evidence the Tribunal will use its skill and experience to establish the probable facts, and base the decision upon those findings.

Remember

- The Tribunal requires full and frank disclosure of the facts.
- An appeal hearing is like a court hearing. All parties have the right to see and hear all the evidence.
- Evidence is what people say to the Tribunal, and the documents that support what they say.
- All documents submitted or shown to the Tribunal are treated as confidential, but will be sent to all parties to the proceedings. That includes any document sent in marked as confidential, or not for circulation.
- It is up to you to provide the evidence that you rely on. The Tribunal does not collect evidence by writing letters or making phone calls. The Tribunal does not have the Commission's files and does not know what you have told the Commission.
- The Tribunal will have read the submission prepared by the Commission for the hearing that has already been sent to you.
- The Tribunal can go ahead with a hearing, even if a party to the case is not there, or has not provided evidence which has been directed. The Tribunal may use its expertise to find the facts where there is no direct acceptable evidence.
- The Tribunal Procedure Rules provide that it is the duty of all parties to co-operate with the Tribunal.